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| 10/602,406 | 06/23/2003 | James A. Kovach | 16-343 | 1673 |
| 7590 | 01/27/2006 | | EXAMINER | |
| WATTS, HOFFMANN, FISHER & HEINKE CO., L.P.A. 1100 Superior Ave., Ste. 1750 Cleveland, OH 44114 | | | MULLER, BRYAN R | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3723 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/602,406 | Applicant(s) KOVACH, JAMES A. | |
| | Examiner Bryan R. Muller | Art Unit 3723 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10, 11 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10, 11 and 19-22 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/11/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 21 is objected to because of the following informalities: The word "a" in lines 11 and 24 should be deleted **or** the word "receptacles" in lines 11 and 24 should be changed to "receptacle". Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10, 11 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battrick (4,237,754) in view of Machovsky (6,698,317), Bollinger (6,269,717) and Duke (Des. 311,315).
4. In reference to claim 10, Battrick discloses a drain spud wrench, comprising a wrench body having a longitudinal axis, a first end portion extending from said wrench body having a first plurality of projections (20) that define first and second transverse channels for receiving a cross-shaped portion of a drain spud and a second end portion extending from said wrench body in a direction opposite from said first end portion, said second end portion includes a second plurality of projections (42) that define third and

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fourth transverse channels for receiving a cross-shaped portion of a drain spud of second size. Battrick however fails to disclose that the first end portion comprises a first polygonal recess sized to accept a standard sized socket drive defined radially inward and axially spaced from said first and second transverse channels, a second polygonal recess that is smaller than said first polygonal recess defined axially inward of said first polygonal recess, said second recess being sized to accept a standard sized socket drive or that the second end portion comprises a third polygonal recess sized to accept a standard sized socket drive defined axially inward of said third and fourth generally transverse channels and a fourth polygonal recess that is smaller than said third polygonal recess defined axially inward of said third polygonal recess, said fourth recess being sized to accept a standard sized socket drive. Machovsky discloses a plumbing tool with a first end having similar projections that define channels (36) and are capable of receiving a cross-shaped portion of a drain spud and a second end that has a polygonal recess (46) sized to accept a conventional socket drive (col. 2, lines 37-40) defined radially inward and axially spaced from said first and second transverse channels. Further, Duke discloses a tub strainer wrench that has projections and channels on both the first and second side to that are similar to the Battrick and Machovsky tools for receiving a cross-shaped portion of a drain spud and further discloses that both sides comprise polygonal recesses sized to accept a socket drive defined radially inward and axially spaced from said first and second transverse channels. Providing the recesses taught by Machovsky and Duke allow the wrench to be driven by a handle or socket drive, which will inherently provide more torque than

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attempting to turn the wrench by hand and a socket drive may be useful where a handle or slide bar may be too large to fit. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide both ends of the Battrick spud wrench with polygonal recesses sized to accept a socket drive defined radially inward and axially spaced from said first and second transverse channels, as taught by Duke and to size both the recesses on both ends to accept a standard sized socket drive, as taught by Machovsky (conventional size is equivalent to standard size). Finally, Bollinger discloses a multi-sized tool adapter (40) that acts as an extension and has two polygonal recesses (22 and 24) wherein the second polygonal recess is axially aligned with the first recess and axially spaced from the first recess that would allow different sized tools and ratchets to be used with the same adapter (col. 1, lines 7-8). Bollinger also discloses that the dual cavity application may be applied to different types of rotational tools (col. 4, line 63 – col. 5, line 3). Therefore, it further would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the axially aligned polygonal recesses in both ends of the Battrick spud wrench, made obvious by Machovsky and Duke, with a second polygonal recess that is smaller than said first polygonal recess defined axially inward of said first polygonal recess in view of Bollinger which would make the tool capable of receiving different sized socket drives and as a result, a more universal tool that could be used with multiple standard socket drives and eliminating the need for a specialized tool to drive the spud wrench or a slide bar that may not fit in specific uses of the tub wrench. Further, Bollinger discloses that the larger recesses may have an effective diameter of 3/8" and the smaller recess may

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have an effective diameter of ¼" (col. 2, lines 64-67), both of which are standard socket drive sizes, thus it further would have been obvious to size both large and small recesses to receive standard sized socket drives.

5. In reference to claim 11, the obvious combination, discussed supra, discloses a solid drain wrench body (the body of all of the Battrick, Machovsky and Duke wrenches are solid, thus the combination discloses a solid body) having a longitudinal axis, a first end portion extending from said wrench body in alignment with said longitudinal axis comprising structure configured to engage a drain spud, said first end portion defining at least two polygonal recesses configured to accept different sized socket drives and a second end portion extending from said wrench body in a direction opposite from said first end portion and comprising structure configured to engage a drain spud of a second size (Battrick clearly discloses that each side is different sized, figures 3A and 3B), said second end portion defining at least two polygonal recesses configured to accept different sized socket drives. It further would have been obvious in view of the Machovsky reference, which teaches that a socket driver may be used to drive the spud wrench and the Bollinger reference, which teaches the use of a socket drive extension with a socket driver to increase the usefulness of a tool that the drain wrench may be used with a socket driver and a socket drive extension.

6. In reference to claim 19, the obvious combination, discussed supra, further discloses that said first and second end structures configured to engage a drain spud are comprised of a plurality of projections that define a series of transverse channels.

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7. In reference to claim 20, the obvious combination, discussed supra, further discloses that the polygonal recesses defined in the first and second end portions are axially inward and axially spaced from said transverse channels.

8. In reference to claim 21, the obvious combination, discussed supra, discloses a drain spud wrench comprising a solid polygonal wrench body having a longitudinal axis, a first end portion extending from said wrench body comprising a plurality of projections (20 of Battrick) that define first and second transverse channels for receiving a cross shaped portion of a drain spud, a first circular extension (26 of Battrick) of said first end portion, where the first circular extension includes four slots (28 of Battrick) aligned with gaps between said projections, said slots extend from a face of the first end portion, and are sloped radially outward and a first and second polygonal recess extending axially inward from the face of said first end portion, forming a first and second polygonal receptacles, where said first polygonal receptacle is configured to accept a standard socket driver and said second polygonal receptacle extends axially inward from the first polygonal receptacle and configured to accept a smaller socket driver than the first polygonal receptacle; and a second end portion extending from said wrench body comprising a plurality of projections (42 of Battrick) that define third and fourth transverse channels for receiving a cross shaped portion of a drain spud, a second circular extension (50 of Battrick) of said second portion, where the second circular extension includes four slots (52 of Battrick) aligned with gaps between said projections, said slots extend from a face of the second end portion, and are sloped radially outward and a third and fourth polygonal recess extending axially inward from the face of said

second end portion, forming third and fourth polygonal receptacles, where said third polygonal receptacle is configured to accept a standard socket driver and said fourth polygonal receptacle extends axially inward from the third polygonal receptacle and configured to accept a smaller socket driver than the third polygonal receptacle.

9. In reference to claim 22, the obvious combination, discussed supra, further discloses that the first and second end portions are of different size (figures 3A and 3B of Battrick).

Response to Arguments

10. Applicant's arguments filed 4/29/2005 have been fully considered but they are not persuasive.

11. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, The Machovsky reference teaches the use of a recess to be engaged by a socket driver to drive a spud wrench that is very similar to the spud wrench of Battrick, thus providing motivation to provide a similar drive recess. Duke also discloses a spud wrench similar to the Battrick spud wrench that has a functional end on both ends and further teaches that a recess

for engaging socket drives may be provided on both ends of the wrench so that either side may be driven by the same tool. Both of these references provide motivation because they are similar art and teach an alternative drive for a spud wrench that is very similar to the base Battrick reference. Finally, the Bollinger reference provides motivation in the disclosure that "any tool end...or any interior cavity may be modified to receive such a tool end extension". This statement provides clear motivation to alter a typical socket drive recess to have two recesses that may receive two different sized socket drives.

12. In reference to the applicant's argument that providing different sized recesses to Duke is contrary to the teachings of Duke because the single recess of Duke passes through the entire tool, there is no disclosure of Duke that the recess does pass through the entire tool, and even if it did, the second recess on either end could be provided as a larger recess that is formed outside the smaller recesses of Duke without destroying or teaching away from the Duke reference. Further, as discussed supra, Bollinger specifically discloses that any tool may be provided with a large and small recess to allow for use with multiple sized socket drives.

13. In reference to the applicant's argument that there is no motivation to combine Battrick with Bollinger because the Battrick reference has a recess through the entire tool and that the Battrick reference provides the advantage of using readily available tubing, the secondary references of Machovsky and Duke clearly provide motivation to add a socket drive recess to both ends of the Battrick wrench and Bollinger merely provides the motivation to make the recess with the ability to be engaged by different

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sized socket drives. Further, Battrick does not disclose anywhere that the wrench may be made from readily available tubing, thus the addition of socket drive recesses on either end would not destroy or teach away from the Battrick reference. Also, the applicant argues that there is no motivation to provide socket drive recesses because the Battrick reference already has a slide bar for turning, however, the Machovsky reference does teach the use of a slide bar and/or a socket drive to turn the tool, the addition of a socket drive would provide the obvious advantage of allowing for a socket drive to be used when a slide bar may not fit due to space constraint and it is well known that a socket drive may be easier to use due to optional ratchet functions.

14. Finally, in reference to the applicant's argument that there is no motivation to combine the Duke and Machovsky references, the current office action uses both references only as secondary references that teach similar advantages, but does not combine the two references together.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Higgins ('816) discloses a plumbing tool for drain fixtures that has a recess capable of accepting a socket drive. Kuhn ('768) discloses a tap wrench that provides a removable crossbar handle capable of driving the tool as well as a polygonal recess capable of accepting a standard socket drive, also to drive the tool.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action and original claims have maintained the same rejection as in the previous office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan R. Muller whose telephone number is (571) 272-4489. The examiner can normally be reached on Monday thru Thursday and second Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on (571) 272-4485. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BRM *BRM*
1/23/2006



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